IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.Appeal No.486 of 1999

Date of decision: 26.3.2007

State of Himachal Pradesh Appellant

Versus

Nawang Respondent

The Hon'ble Mr. Justice V.K.Ahuja, J.
Whether approved for reporting[1]*?*

For the Appellant: **Mr. Ashutosh Burathoki, Addl. Advocate General.**

For the respondent: **Mr. Imran Khan, Advocate vice Mr. S.D.Gill, Advocate.**

V.K.Ahuja,J

This is an appeal filed by the appellant/State of Himachal Pradesh against the judgment of Court of the learned Judicial Magistrate, Ist Class (II), Hamirpur dated 11.5.1999 vide which the respondent was acquitted of the charge framed against him under Sections 41/42 of Indian Forest Act read with Rule 11 of the H.P. Forest Produce Transit (Land Routes) Rules, 1977.

Briefly stated, the facts of the case are that on 30.3.1997 at about 11.00 AM DIP Hari Chand alongwith other police officials was present at Bus Stand, Hamirpur in connection with the investigation of a case alongwith one witness Ramesh chand when they saw the accused-respondent alighting from the bus carrying two bags on his shoulder. On suspicion, the respondent was

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

searched and it was found that the bag was containing 17 Kgs of *Dandasa* which was taken into possession and the case was registered. After investigation, the challan was filed before the learned trial Court who tried the case as detailed above, resulting in acquittal of the accused-respondent.

I have heard Shri Ashutosh Burathoki, learned Addl. Advocate General for the Appellant and Shri Imran Khan, Advocate for the respondent and have gone through the record.

The submissions of the learned Addl. Advocate General were that the statements of the official witness were there and the mere fact that these were not corroborated by the independent witnesses is not sufficient to hold that the statements of the official witnesses cannot be relied upon. It was further submitted that the findings recorded by the learned trial court cannot be said to be based on facts and as such, are liable to be reversed.

On the other hand, the learned counsel for the respondent had supported the impugned judgment for the reasons given therein. It was submitted by him that in spite of sufficient opportunities to join independent witnesses, only one witness was joined ignoring the provisions of Section 100(4) Cr.P.C. It was further submitted that the act of the Investigation Officer in not joining two independent witnesses as required by law, makes the prosecution story doubtful and even the only witness examined and associated had not supported the prosecution story and, therefore, the findings recorded by the learned trial Court cannot be said to be perverse calling for interference by this Court.

From a perusal of the record of the case, it is clear from the statements of official witnesses including the Investigating Officer, that the *Dandasa* weighing 17 Kgs. was recovered from the two bags from the possession of the accused on his personal search. However, it is clear that recoveries were effected on 11.00 AM at Hamirpur Bus Stand, and it cannot be said that other independent and respectable persons were not available at that time to the Investigating Officer. The Investigating Officer has not given any reasons for not joining two independent witnesses and only one witness Ramesh chand was joined and examined who also did not support the prosecution story. In the absence of independent witnesses, the learned trial Court had not relied upon the testimony of the official witnesses which becomes doubtful in view of the non-compliance of the mandatory provisions of Section 100(4) Cr. P.C. There is nothing on record to show that PW-3 Ramesh Chand had any reason to support the accused. The reasoning given by the learned trial Court in disbelieving the prosecution story cannot be said to be perverse or such which calls for interference by this Court. Therefore, the findings recorded by the learned trial Court acquitting the respondent-accused do not call for any interference by this Court and as such, they are liable to be affirmed.

In view of the above discussion, I accordingly hold that there is no merit in this appeal, which is accordingly dismissed. Bail bonds are discharged.

26th March, 2007 (V.K.Ahuja),J
(SDS)